

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

R.B.,	:	
Plaintiff	:	
	:	No. 1:16-cv-1075
v.	:	
	:	(Judge Kane)
	:	
LISA HOLLIBAUGH, et al.,	:	(Magistrate Judge Mehalchick)
Defendants	:	

ORDER

Before the Court in the above-captioned action is the February 1, 2017 Report and Recommendation of Magistrate Judge Mehalchick. (Doc. No. 51.) No timely objections have been filed. **ACCORDINGLY**, on this 17th day of February 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT**:

1. The Court adopts the Report and Recommendation of Magistrate Judge Mehalchick (Doc. No. 51);
2. The moving Defendants' motion to dismiss Plaintiff's complaint (Doc. No. 12), is **GRANTED IN PART AND DENIED IN PART**, as set forth below:
 - a. The following claims are **DISMISSED WITH PREJUDICE**:
 - (1) All federal law claims against Deputy Superintendent Whitesel and Corrections Officer Oliver for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6);
 - (2) Count X of Plaintiff's complaint in its entirety for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6); and
 - (3) All claims against the SCI-Smithfield Defendants and the SCI-Waymart Defendants in their official capacities for lack of jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1);
 - b. The following claims are **DISMISSED WITHOUT PREJUDICE**:
 - (1) Plaintiff's supervisory liability claims against Superintendent Gavin and Assistant to the Superintendent Vinansky for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6);

- (2) Plaintiff's Eighth Amendment claims against Corrections Officer Abrashoff for deliberate indifference to a substantial risk of harm and deliberate indifference to a serious medical need, under Counts II and III of the complaint, for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6);
- (3) Plaintiff's conspiracy claims brought under 42 U.S.C. § 1983 in Counts IV and IX, as well as Plaintiff's state law civil conspiracy claim in Count XV, for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6); and
- (4) Plaintiff's state law claims asserted against Assistant to the Superintendent Hollibaugh, Superintendent Fisher, Deputy Superintendent Whitesel, Corrections Officer Oliver, Corrections Officer Lear, Corrections Officer Bard, Corrections Officer Abrashoff, Superintendent Gavin, and Assistant to the Superintendent Vinansky due to state sovereign immunity;

c. The motion to dismiss is **DENIED** in all other respects, and the remaining claims in the complaint may proceed as alleged, including:

- (1) Plaintiff's supervisory liability claims against Superintendent Fisher and Assistant to the Superintendent Hollibaugh;
- (2) Plaintiff's Fourteenth Amendment state-created danger claim and Eighth Amendment deliberate indifference to a substantial risk of harm claim against Corrections Officer Lear;
- (3) Plaintiff's Eight Amendment deliberate indifference to a serious medical need claim against Corrections Officer Bard;
- (4) Plaintiff's claims against the Department of Corrections under the ADA and the RA in Counts XI and XII of the complaint; and
- (5) Plaintiff's state law claims asserted against Corrections Officers Martin, Strasburger, James, Brodhead, and Stoney in Counts XIII and XIV of the complaint;

3. Plaintiff may file an amended complaint within thirty (30) days of the date of this Order to replead the claims dismissed without prejudice identified above, in accordance with Magistrate Judge Mehalchick's Report and Recommendation;

4. The Clerk of Court is directed to **TERMINATE** Defendant Nurse Ronald from the caption of this action;

5. The moving Defendants' motion for a more definite statement (Doc. No. 12), is

DENIED; and

6. The matter is remanded back to Magistrate Judge Mehalchick for further proceedings.

s/ Yvette Kane

Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania